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C O N F I D E N T I A L SECTION 01 OF 02 NEW DELHI 003265

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TAGS: [PREL](#) [PGOV](#) [PTER](#) [MOPS](#) [PK](#) [IN](#)  
SUBJECT: MENON WELCOMES END USE MONITORING TALKS, HAS NOT  
BUDGED ON OUTSTANDING ISSUES

REF: CONFIDENTIAL EMAIL SHIVERS-MULFORD (12/30/08)

Classified By: Ambassador David Mulford for Reasons 1.4 (B and D)

1. (C) Foreign Secretary Shivshankar Menon told Ambassador Mulford December 31 that he welcomed a visit by Department of Defense Assistant Secretary Mitch Shivers on January 7 to seek an agreement on End Use Monitoring (EUM), and confirmed that he planned to meet personally with Shivers early in his visit. Menon expressed confidence that he could work an agreement through the Indian inter-agency system provided it adequately addressed two outstanding issues, access to and use of the transferred equipment. Ambassador Mulford read verbatim the two "non-negotiable" U.S. principles related to the outstanding issues of access and use that A/S Shivers conveyed to Ambassador Mulford in advance of the Menon meeting (ref B): first, the United States needs the assurance of physical access to transferred defense hardware; and second, India must be willing to agree to only those end-uses consistent with U.S. law (e.g., self-defense, internal security, and civic action).

2. (C) On access, Menon stressed the difficulty of physical access to all deployed equipment at any time, saying, "Clearly we cannot grant access to all the articles all the time; we need to express that in the EUM agreement language somehow." He suggested, for instance, that the Indian government could share records of how the equipment was used and deployed that would constitute verification of use, but it could not accept the "categorical access to all sites at all times, as it is currently written." (Ambassador Mulford understood this to mean that a particular piece of equipment might be at a site which for other reasons -- location, secrecy, etc. -- might not itself be accessible at the time requested or the equipment might be imbedded in such a way as not to be practically accessible.) Menon stressed that he believed this issue was "solvable" and that he hoped Shivers would come prepared to work out language that could address this concern.

3. (C) On use, Menon expressed his opinion that the Indian formulation proposed by Foreign Minister Mukherjee to Secretary Rice on October 4 exceeded the requirements of U.S. law. He explained that the GOI viewed the principle of "use"

in terms of who used the equipment, rather than how it was used, and that limiting use of the equipment to the Indian Armed Forces should be sufficient. Nevertheless, the GOI could agree to "a simple definition of use, including the three elements" -- i.e. self-defense, internal security, and civic action -- but that the Indian government could not agree to enumerate all the conceivable legitimate uses to which the equipment could be put. (Note: The October 4 GOI formulation referred to uses "including" the three mentioned without limiting potential uses to only those three.) Menon said in any case the Indian government would interpret "self-defense" broadly, suggesting that a specific list, however long, would have no practical effect in circumscribing uses of the equipment.

14. (C) COMMENT. Menon appeared not to have accepted a specific list of authorized uses, despite acknowledging that a broad interpretation of "self-defense" could reduce the practical effect of this requirement. He also seems not to have accepted the requirement for physical inspection, even taking into account the manner in which such inspections work in practice and that inspections would only happen at a time and place of mutual agreement. However, unlike negotiations in November, when he was unexpectedly out of town, Menon stressed that he wanted to work out agreeable language and he seemed personally committed to giving EUM one last chance before the transition, realizing that failure could mean a delay of many months. Menon appeared confident about what he could sell to the Cabinet Committee on Security and how much he could give away. His personal involvement gives us a

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chance to succeed, but his default to India's previous positions suggests it is by no means guaranteed. END COMMENT.

MULFORD